[*Justice of the Peace and Local Government Review*, February 15, 1958]

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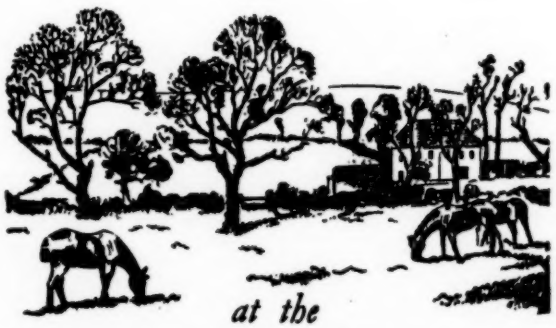

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[Justice of the Peace and Local Government Review, Feb. 15, 1958.]

JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW

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CONTENTS

REPORTS

NOTES OF THE WEEK

Road Traffic Act, 1956—more sections in force

The Road Traffic Act, 1956 (Commencement No. 2) Order, 1956 (S.I. 1956 No. 1937 (C.16)) brings further provisions of the Act into force on January 1, 1957, as follows:—Sections 5, 6, 15, 19, 20, 21, 22, 23, 24, 41, 47 (2), the second and third schedules, the eighth schedule, para. 19, and that part of the ninth schedule which relates to the repeal of certain words in s. 1 (4) of the Road Transport Lighting Act, 1927.

Section 5 allows the Minister of Transport and Civil Aviation to provide for disseminating information or advice about the use of roads, and deals with the powers of local authorities in this connexion. The second schedule is concerned with this matter.

Section 6 amends s. 59 (1) of the 1930 Act so that additional powers may be given to remove parked vehicles from the highway.

Section 15 requires that dogs shall be kept on a lead on designated roads, such roads being specified by orders made by the local authority for the area in question.

Section 19 allows the Minister to make orders, on the application of the local authority, designating parking places on highways in the Metropolitan Police District or the City of London and providing for charges being made for their use. Sections 21 to 24 deal with other matters relating to those parking places and the charges to be made for their use. By s. 21 (7) places outside the Metropolitan Police District and the City of London may be specified as places to which these provisions are to apply. The third schedule relates to the procedure for orders designating parking places.

Section 41 abolishes the difference which has existed in the methods of calculating lighting-up time during periods of "summer time" and "winter time" respectively. The "hours of darkness" are always to mean, for this purpose, the time between half an hour after sunset and half an hour before sunrise.

Section 47 (2) deals with appeals to the Minister from decisions of the traffic commissioners relating to road service licences.

Duplication of Proceedings

Before the coming into operation of the Coroners (Amendment) Act, 1926, it not infrequently happened that while proceedings upon a charge of murder or manslaughter were being heard before examining justices, the coroner was proceeding with his inquest. A great deal of evidence would be taken before both courts, and there might be a committal for trial from each court. By s. 20 (5) of that Act it was provided that if before verdict the coroner is informed that some person has been charged before magistrates with murder, manslaughter or infanticide, he shall, in the absence of reason to the contrary adjourn the inquest until after the conclusion of the criminal proceedings. The clerk to the justices has the duty of informing the coroner of the making of the charge. Undoubtedly a great deal of time and expense has been saved as the result of thus avoiding unnecessary duplication.

It can happen, however, that the coroner's inquest is completed and a person committed for trial without there being any magisterial proceedings yet begun. Such a case has been reported in Nottinghamshire. A motorist was committed for trial by examining justices on a charge of manslaughter. His solicitor is reported as protesting against what he described as a complete duplication of procedure. The coroner, he said, had already issued a warrant, and it was not necessary for another warrant to be issued. He submitted that there was no statutory requirement that the magisterial proceedings should go on; there was no fresh evidence, the witnesses were the same, and would presumably say the same thing.

This sounds reasonable, but the representative of the Director of Public Prosecutions supplied an explanation. He is reported to have said that the reason why committal proceedings were brought was that the Judges insisted it should be done. Having regard to the differences in the nature of the two procedures, of the evidence admitted, and the deposition taken, this may be the answer.

At the Assizes, states the *Nottingham Evening Post* the charge of manslaughter was not proceeded with, and the prosecution accepted a plea of guilty to dangerous driving.

The Consequences of an Offence

The defendant in this case was fined £20 and disqualified from driving for five years. It would be easy, and thoroughly misleading, to produce a striking headline "Twenty Pounds fine for killing a man." It would be misleading, if only because the charge of manslaughter was abandoned and the case was dealt with as one of dangerous driving only and not as one in which the death of a person was an element of the offence. But of course there is a principle here of how far the consequences of an offence affect the degree of guilt and the measure of punishment. Morally a man's guilt is determined by his intentions rather than by the consequences of his acts.

In some classes of offence the very nature of the offence is determined by the intent, as in assaults, for instance, where there may be an intention to murder or to do bodily harm. In other cases, the question of intent may be a most important consideration in assessing the amount of punishment. In road traffic offences of the nature of dangerous driving, utter recklessness, is almost as bad as an intention to cause harm. In this particular kind of case, it would often be wholly unjust to punish according to the consequences of the offence. The callous and reckless driver may escape doing hurt through the skill of another and more careful driver or by sheer luck, while a momentary lapse by a generally cautious driver may result in a fatality. The natural distress and horror at the death of the victim could easily throw other considerations out of proportion, but magistrates usually do manage, we believe, to look at the facts as a whole. In the case at Nottingham Assizes, although unfortunately a man was killed, the learned Judge characterized the offence as not a bad case of dangerous driving, but at the worst as one of not keeping a proper look-out. That the offence was not regarded as unimportant is shown by the fact that although it was visited with only a fine, there was a five-year disqualification, a measure of protection to the public as well as a punishment in the eyes of the offender and a mark of the gravity of the consequences of his offence.

Police practice in "drunk-in-charge" cases

We return again to this subject because we have received further information about the matter. Our readers may remember that we have dealt with it previously at 120 J.P.N. pp. 751 and 815. We are informed that the details of the procedure followed are that when a person is arrested on such a charge he is taken to a police station and is told at once that it is proposed to have him examined by a doctor to see if he is ill and that, if he wishes, he can call his own or any other doctor. The doctor called by the police examines the man to see if he is ill, and, if he is willing, a sample of his urine is taken. This sample is divided into three parts, one of which is given to him, if he wishes, one is retained by the police and the third is sent to the police laboratory. At the conclusion of the examination the defendant is told of the doctor's findings, and he is reminded of his right to call another doctor if he wishes. We are not quite sure, but we assume that what he is told is whether the doctor finds any evidence of illness, the doctor not having been asked, apparently, to examine him with a view to expressing an opinion on his condition so far as alcohol is concerned.

We are informed that this procedure was followed in the case to which we referred at p. 751 and that evidence was given in the usual way by the available witnesses and by the doctor. The change in police policy is that the doctor is no longer called to certify whether, in his view, the defendant is unfit to drive through drink or drugs. What the police ask the doctor to ascertain is whether the defendant's condition is due to illness. If it is not, the practice is to proceed with the case on the evidence of the police and other witnesses who saw him at the time of his arrest and observed his conduct at that time or during the immediately preceeding period. If a sample of urine has been taken evidence is also given of the amount of alcohol present in the sample.

Our correspondent has reason to believe that many doctors prefer being asked to deal with such cases in this way rather than being asked to certify whether, in their view, a defendant is unfit to be in charge of a motor vehicle by reason of drink or drugs. The new practice has been adopted, we are told, in several police areas other than the one in which the case to which we have referred arose. We confess that we cannot see how the practice involves any unfairness to a defendant, and we are glad to be able to give full details of it so that our readers may form their own opinions on the matter.

Amusing Impudence

A recent practical point on the subject of the Food and Drugs Act, 1955, mentions a defence under s. 2, which is amusing because of its impudent ingenuity. That section is concerned with the sale of food. It makes it an offence to sell to the prejudice of the purchaser an article of food which is not of the nature, or not of the substance, or not of the quality demanded. Selling is the essence of the offence, so that if an article of food passes from one person to another, otherwise than by sale, there can be no offence against this section. Other offences may, of course, have been committed, sale or no sale. In the case put to us, a baker making daily deliveries of bread left at a customer's house a loaf which brought him, undoubtedly, within the language of the section if there was a sale. The arrangement was, however, that he should be paid for a week's deliveries at the end of the week, and apparently he sought to argue that the sale was not completed until payment. This is in this context a truly startling suggestion. A large number of ordinary sales, not merely of foodstuffs but of goods of all kinds, are effected upon credit—it may be for a week, a month, or a longer period. The everyday commodities consumed in every household are regularly paid for week by week, even though, like milk, and sometimes bread, they are delivered by the seller every day. It cannot be the law, and in truth it is not, that there is no sale until payment has been made; a humorist might think of some strange propositions that would follow, if (for example) milk delivered and consumed on Sunday did not become the consumer's property until the roundsman was paid on the following Saturday.

After-Care

It has been said that the test of any prison system is what happens to the prisoner when he comes out. From this point of view the work of after-care becomes of the greatest importance. This has been realized in this country, and after-care work in connexion with prisons and borstals has been well organised.

On the whole, the annual report of the Council of the Central After-Care Association for 1955 is encouraging. The statistical tables are worth study, and if, as in the case of borstal, the number of re-convictions during supervision and after discharge seem rather large, it should be remembered that the authorities are now handling a great many young men and women who are difficult material, and that many of them would not, in the early days of the system, have been committed to borstal. Mr. F. C. Foster, director of the borstal division of the Association, calls attention to the change

in the type of boy being committed with the result that the borstal system is being asked to solve problems, physical and emotional, that were certainly not in the minds of its founders and to accept boys who by reason of disabilities would not have been accepted. In his opinion, reformative institutions are being asked to undertake more complex tasks than formerly and a new outlook must meet this changing situation.

Prison and The Prisoner

Because the lot of the prisoner today is better than it used to be, and because wide publicity is given to such matters as educational courses, lectures and entertainments in prison, people suggest that prison is so comfortable as to have lost its deterrent effect. The Rev. Martin W. Pinker in his section of the report, does not support this view. Apart from a mere handful of aged men who have spent most of their adult lives in institutions of one kind or another, he says, no man likes being sent to prison. Any who doubt this truism, he goes on, need spend only a few hours in any one of our courts of justice to have their doubts removed. The protestations of innocence; the circumstances outside their control; the sudden realization of the need to shoulder family responsibility; the temptation which was yielded to on the spur of the moment; the plea to the court for a chance—these, and many others are proof that men think most of their liberty.

Preventive detention cases must always be a problem. According to this report, "the recidivist is not slow to remind us that he does not like Preventive Detention. In fact, very many affirm that the fear of getting another P.D. sentence is the safeguard against their return to crime. Yet many of these men take a chance and soon appear before our courts again on fresh charges." This is borne out by the statistics of re-convictions. On the other hand, the figures relating to prisoners discharged from long sentences of imprisonment appear to be more satisfactory.

Home leave for prisoners was naturally regarded at first with some misgiving, especially by those people who took the view that prison was already made too easy. However, the experiment has worked well. During 1955 the number of prisoners who received this priviledge was 258, and all returned to prison to complete their sentences in accordance with instructions. Leave gave them the opportunity in some instances of seeing prospective employers.

Co-operation

Sir Lionel Fox, chairman of the Council, in introducing the report acknowledges the valuable co-operation of various organizations and authorities. One difficult problem has always been the homeless prisoner. The Council approached the Salvation Army and the Church Army about providing suitable hostel accommodation for homeless women and girls, and close liaison has been maintained with particular reference to women and girls. The Magistrates' Association also helped by calling a conference, at which various interested organizations were represented to consider methods of dealing with the homeless prisoner. Acknowledgment is made of the interest shown in and help given to those released from prison or borstal on the part of the Ministry of Labour, the War Office, and the National Assistance Board. The Board may have to support the wife and children while a man is serving a prison sentence, but it is prepared to do more in suitable cases and to consider payment of travelling expenses to a distant prison where the wife is unable to meet such expense. In so doing, says Sir Lionel Fox, they make a most valuable contribution to the rehabilitation of the prisoner by helping to preserve unbroken the ties of home and family throughout his sentence.

Much more is done today for the ex-prisoner than formerly and the man who leaves prison has less to fear from lack of employment and the temptations of idleness. Full employment helps him, and so does the increased effort made on his behalf by the After-Care Association. Their work is not always appreciated, but some at least of those who benefit are grateful. Here is an example taken from the report: "A young prisoner of superior education and from a good home in South Wales, who had quarrelled with his parents, was found lodgings in London and by a special effort introduced to work as a showroom salesman: he has long been off licence but still calls in occasionally at the offices of the Borstal Division to express his appreciation of this chance: he is now on good terms with his parents and in charge of his own showroom at a salary exceeding £12 a week."

Poor Relief in the Nineteenth Century

We have already become quite used to the substitution of national assistance for poor relief, or, as it was known latterly, public assistance. There are people who abuse the national assistance system by their indolence or by fraud, but in general we may be thankful for legislation which is humane in both intention and administration.

Recently we came across a cutting from *The Times* which repeated a paragraph from the issue of that newspaper dated January 30, 1832, quoting a local newspaper report of proceedings before the St. Albans petty sessions. "The overseers of the Abbey parish were summoned to show cause why they refused to relieve Mary Sears; her husband had absconded, leaving her with three children, the eldest not five years of age, and which children the parish-officers compelled her to bring to the poor-house three times a day, for a small portion of food, without giving herself any, a distance of upwards of two miles each journey. The food was delivered to them at the door, where they were compelled to eat it. Mr. W. Langley, a parish officer, stated that they only refused her by way of an experiment. The woman was ordered relief as well as the children."

It is difficult to believe that either overseers or parish officers could be so unfeeling and unimaginative, and it was fortunate that magistrates took a more enlightened view. Things got much better towards the end of the nineteenth century, although there were still instances of what would now be regarded as harsh treatment of poor people.

It is well to remember, however, that before the old poor law came to an end it was administered kindly and sympathetically by many of the authorities and their officials.

That Ministry Again

On occasions in the past we have referred to certain money wasting and basically useless bureaucratic activities of certain ministries including the Ministry of Agriculture and Fisheries. There was, for example, the requirement to submit for scrutiny all actual bills paid for grant aided work on land drainage schemes: the paper-empire builder who insisted on this nonsense has evidently never heard of the district auditor or else regarded him with the same lack of esteem as he evidently did the senior officers of local authorities entrusted with the execution of the works and the preparation and certification of claims for grant. Happily representations have now succeeded in effecting a change to the procedure which was common practice previously with all ministries except this one.

The latest instance of time wasted compulsorily at the insistence of this Ministry is in relation to the remuneration of public analysts. There is a Joint

Negotiating Committee for these officers which makes recommendations from time to time about their salaries but nevertheless the civil servants, relying on s. 98 (3) of the Food and Drugs Act, 1955, state that the Ministry must give attention to each individual public analyst and are not prepared to issue a general circular approving the recommendations of the Joint Negotiating Committee. They are thus relying upon a statutory provision to perpetuate a formality which under present day conditions and methods of salary negotiation has completely lost its value—if, which is doubtful, it ever had any. It is a fact moreover that this provision was brought to notice as worthless when the Bill which is now the Food and Drugs Act, 1955, was under discussion, and the Ministry refused to take any action to change it.

It is a favourite device of government departments (who draft the Bills) to use the subsequent legislation plus the alleged difficulty of finding parliamentary time to change it as a bulwark against change when often all reason is against them. Occasionally on such a matter as backdating police pay awards public opinion becomes impatient of obstructionist tactics and the department responsible is sharply put in its place by Parliament. In administrative matters however, where no one's interests appear to be seriously affected, it is much easier for bureaucracy to have its way and to continue to provide unproductive jobs for unwanted staff. The present situation of this country calls for a speedy review and elimination of wasteful activities and no body should be more aware of this fact than the civil service.

Proving a Right of Way

A memorandum issued by the Central Rights of Way Committee, which was reprinted in *Rural District Review*, describes the conditions for proving a claim to a public path as required by the Rights of Way Act, 1932. The object of this Act was to introduce a method of proof similar to, but considerably simpler, that of proof at common law. Proof under the Act is now the most usual method by which all claims to public use are established. The memorandum explains the proof which is required under the various provisions of the Act. In the first instance it must be shown that the path was actually enjoyed or used by people extensively as a proper means of passage. Intermittent use is admissible as evidence but clearly the more frequent and continuous the use, the more valuable the evidence is likely to be. The use must be by the public as such; and as of right. This means "believing themselves to be exercising a public right" (*Hue* v. *Whitley* [1929] 1 Ch. 440, *see* also *Jones* v. *Bates* [1938] 2 All E.R. 237). The use must be without interruption. A single act of interruption by the owner is of much more weight, upon a question of intention, than many acts of enjoyment. (*Poole* v. *Huskisson* (1843) 11 M. and W. 827, *see* also *Moser* v. *Ambleside Urban District Council* (1925) 89 J.P. 61). The mere locking of a gate without proof that it was primarily intended to interfere with public passage, falls short of interruption within the meaning of the Act. (*Lewis* v. *Thomas* [1950] 1 All E.R. 116). The right must have been exercised for a full period of 20 years and the memorandum gives some useful advice as to the termination date for the 20 years in the light of procedure followed under the National Parks and Access to the Countryside Act. Finally it is pointed out that the period of 20 years' use required by the Act of 1932 is inexorable, while at common law from five to 50 years may be required; that in view of s. 58 of the National Parks and Access to the Countryside Act a claimant need not concern himself with such questions as whether the land is settled or not, as in claims at common law; and that whereas at common law it is the duty of the claimant to prove the intention of the owner (*Folkestone Corporation* v. *Brockman* (1914) A.C. 338), it rests with the landowner to prove, if he can, that there was never during the period of public use an intention to dedicate a public right of way.

The Central Rights of Way Committee has done a useful piece of work in producing this memorandum which should be read in full by those who are interested.

Title to Commons

The Country Landowners Association are stated to have sent a memorandum to the Royal Commission on Common Land, asserting that in most cases where the public were using commons or village greens for recreation they had no legal right to do so. As regards village greens, we should have thought that "most cases" was an overstatement. It is true that the right of the inhabitants of the village to play games on a piece of land can, apart from agreement, be established only by common law prescription, but in everyday practice it has been normal in our experience for a parish council to regularize the position, by agreement with the lord of the manor or other owner of the soil. There is seldom any difficulty about this. As regards commons, apart from village greens, the assertion by the Association is probably well founded. It is a general delusion that common land is land over which the public at large have a right to go, especially for recreation purposes. This delusion has been fostered by the frequent disuse of grazing and other commonable rights, coupled with the fact that nobody had sufficient pecuniary concern to put himself out, in order to enforce whatever private rights existed of preventing public access: such prevention would obviously be expensive and difficult, where there was a large area of open land. Limited rights of recreation over many commons have been created by legislation in the nineteenth century, and the twentieth has seen an extension of public rights of access, to common land as well as to other stretches of open country. The Association called attention also to damage done by driving vehicles over common land, and by its unreasonable use for picnic sites. They might have added, its use for unauthorized camping which, in some places, has led to contamination of the surface soil and pollution of the head waters of streams. Their remedial suggestion is that a register of ownership and claims be prepared for all common land, by county and district councils, and that this register should in due time become definitive. There is a precedent for this, in effect, in the lodging of notices with local authorities under the Rights of Way Act, 1932, and we think the task would be worth while.

Native Africans and the Law

A recent issue of *South Africa* refers to an African native appearing at the Durban magistrates' court as defence counsel in a criminal case. This was the first occasion of its kind and made legal history. But an African advocate called to the Transvaal bar is likely to be given a separate robing room, as his application for accommodation to Her Majesty's Building, Johannesberg, has been refused by the Native Affairs Department as being "contrary to policy." When the Johannesberg bar wrote to the Minister for Native Affairs protesting against this decision, which severs the advocate from his colleagues and leaves him to establish chambers in a native location, Dr. Verwoerd replied accusing the barristers of being led by political propaganda and hinting that they were afraid that the advocate concerned would get too much African custom from the location, and compete with the European members of the bar.

Another legal matter mentioned in the same issue of this journal was a suggestion at the South-West African Nationalist Congress that corporal punishment should be given to adult non-European men instead of fines and imprisonment. But the chairman pointed out that corporal punishment was disapproved of by the civilized world and that if magistrates were obliged by the Nationalist government to impose corporal punishment for all native offenders, it would place the government in a difficult position. Another suggestion was that the police should take the punishment of native labourers into their own hands but the chairman also disagreed with this suggestion because he said the police were already being observed "under the magnifying glass of the Opposition."

PETROL RATIONING

It is sad to have to realize that in a so-called time of peace we are back to a war-time system of rationing with all its inconvenience and all its opportunities for the unscrupulous to seek to profit from it. The rationing period began on December 17, 1956. The Motor Fuel (No. 2) Order, 1956, regulates the purchase and supply of "motor fuel," defined as meaning heavy oil and motor spirit other than aviation spirit. "Heavy oil" is itself defined as meaning hydrocarbon oil, other than motor spirit, for supplying motive power to a motor vehicle. "Motor spirit" is defined as hydrocarbon oils, distilling or giving off inflammable vapour at stated temperatures, for use in spark ignition engines, spoken of generally, we presume, as petrol.

Article 3 introduces restrictions on the furnishing and acquisition of motor fuel. The restrictions do not apply to motor fuel supplied for refining, treating or blending or to benzole, other than motor benzole mixtures, or to diesel oil for use in vehicles to which s. 4 (2) (*a*) (*b*) (*c*) and (*d*) of the Vehicles (Excise) Act, 1949, (as amended by the Finance Act, 1950, s. 13 and Third Schedule) apply or in road rollers. The former vehicles are certain vehicles used in agriculture, those used for excavating and shovelling work, mobile cranes and mowing machines. The importation of motor fuel is also outside reg. 3.

The restrictions are that

(*a*) no person other than a supplier shall furnish any motor fuel;

(*b*) no person shall acquire any motor fuel otherwise than from a supplier;

(*c*) no person shall furnish or acquire motor fuel otherwise than against the surrender to the supplier of the appropriate coupons on which any required particulars have been inscribed. The coupons must, so far as the basic ration is concerned, relate to the specific vehicle into the tank of which the fuel is supplied.

There is a provision that motor fuel may be supplied by wholesale to a dealer if the coupons surrendered by him on which he had lawfully supplied motor fuel to customers cover the amount supplied to him less an allowance of one *per cent.* A "supplier" is a person carrying on the business of supplying motor fuel.

Article 4 requires a person to whom coupons are issued to enter, where appropriate, any required particulars in a blank space on the coupons before he tenders the coupons to a supplier. If there is a space for his signature he shall also sign the coupons or cause them to be signed on his behalf. The entries and the signature are to be in ink.

Article 5 deals with the improper use and transfer of coupons. Where application has been made for the issue of coupons for particular purposes or where coupons have been issued subject to their being used only for certain purposes, it is an offence to use, or to cause or allow the use of, any coupons for any other purpose or knowingly to supply motor fuel for any such unauthorized purpose. In particular, motor fuel must not be acquired or knowingly furnished (except under the authority of a licence) for use in a private vehicle against the surrender of coupons marked (i) "Goods" and "X"
(ii) "Pass" and "Y"
(iii) "Agr" and "F"
(iv) "Ind" and "W" or
(v) "P.T." and "T"
Also, except under the authority of a licence, no one may transfer a coupon to any other person or accept or be in possession of a coupon which is being or has to his knowledge been, transferred. "Transfer" includes any indirect transfer by handing to a supplier or his servant or agent. (But see also art. 13 as to transfer or the sale or transfer of a vehicle).

By art. 6 coupons bearing the letters included in groups (i) to (iv) in art. 5 may be surrendered to a dealer at any time during the period of their validity, after any required particulars have been entered on them; and by art. 7 motor fuel may thereafter, during the period of validity, be supplied and acquired within the amount covered by the coupons so surrendered in advance of supply. By art. 8 the dealer is required to keep adequate records of the matters specified in the article as a check that motor fuel supplied in the way authorized by art. 7 is properly so supplied. By art. 9 a dealer must return to the person by whom it was surrendered any coupon against which he has not, during the period of validity, supplied fuel to that person, and any coupon so returned shall thereafter be deemed not to have been surrendered.

By art. 10 it is unlawful, except under the authority of a licence, to be in possession of any kerosene mixed with motor spirit.

Article 11 restricts the use of motor fuel. Except under the authority of a licence it is unlawful to use or to cause or allow the use of, motor fuel acquired against the surrender of any coupon

(*a*) for a purpose not mentioned in the application on which the coupon was issued or one which, though mentioned in the application, was excluded when the coupon was issued;

(*b*) otherwise than in accordance with any condition or instruction appearing on or attached to the coupon or communicated in writing to the person to whom it was issued, or;

(*c*) where a coupon was acquired in respect of a particular vehicle or class or description of vehicles, in any other vehicle or in a vehicle of the wrong class or description.

The use of motor fuel acquired under the authority of a licence is similarly controlled. Motor fuel exempted from the restrictions of art. 3 because it is supplied for refining, etc., or for use in a vehicle coming within those mentioned in the exemptions must be used only for those purposes or in an appropriate vehicle and any one who uses or causes or allows its use for any other purpose commits an offence. Except under a licence kerosene must not be used in motor vehicles chargeable with duty under the Vehicles (Excise) Act, 1949, other than those vehicles to which s. 4 of that Act (as amended) applies, nor must any person use any special boiling point

spirits, white spirit or rubber solvent for supplying motive power to an internal combustion engine, or cause or allow such use.

No producer of motor fuel may use fuel produced by him for supplying motive power to any vehicle registered in his name under the Vehicles (Excise) Act, 1949, unless a licence authorizes such use (art. 12).

Article 13 authorizes the transfer of basic ration coupons with a vehicle when the vehicle is sold or transferred and the transfer to, and use by, the buyer of fuel in the tank of the vehicle when it is sold.

By art. 14 the Minister of Fuel and Power may prescribe what quantities of fuel shall be equivalent, respectively, to one unit and half a unit on any coupon, and by art. 15 he may prescribe the period during which a coupon shall be valid.

Article 16 deals with the return of unused coupons. The person to whom an unused coupon has been issued or lawfully transferred must hand it in or send it by post to the issuing officer within the 14 days next following

(*a*) the end of the period during which fuel could be supplied against the coupon, or if it is in a book, against the last coupon in the book; or

(*b*) the day on which the purposes for which it was issued ceased to apply; or

(*c*) the day on which the vehicle in respect of which the coupon was issued ceases to be licensed for use on roads if it is a vehicle so licensed; whichever such date first occurs. By art. 16 (3) the Minister or a chief officer of police may give written authority to certain persons to allow them to require any person in possession of a coupon to produce it, and to authorise their taking possession of any coupon if they have reasonable ground to believe it is or has been evidence of an offence against the order or the Defence (General) Regulations, 1939, and these provisions apply equally to forged coupons and to any documents so closely resembling coupons as to be calculated to deceive.

By art. 16 (5) the Minister delegates the function of issuing coupons in Great Britain to the Minister of Transport and Civil Aviation and, in Northern Ireland, and the Ministry of Commerce.

Article 17 and 18 deal with the keeping of records by a person to whom certain coupons have been issued in connexion with any public utility undertaking or trade or business carried on by him, and art. 19 deals with licences and authorities granted under the order.

By art. 21 infringements of the order are offences against the Defence (General) Regulations, 1939, which brings us back to reg. 92 of those regulations with its summary maximum penalty of three months imprisonment and/or a fine of £100. Proceedings may also be by indictment when the maximum penalty is two years imprisonment and/or a fine of £500.

Regulation 91 will also apply, and this means that where a body corporate is convicted then every director or officer of that body, so acting at the time the offence was committed, is deemed guilty of the offence unless *he proves* that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission.

By reg. 93 proceedings for an offence must not be instituted except by a constable or by, or with the consent of, the Director of Public Prosecutions but this restriction must be read with reg. 93 (1A) as follows:—

" No restrictions imposed by these regulations upon the institution of proceedings shall apply

(*a*) to the arrest, or the issue or execution of a warrant for the arrest of any person in respect of any offence against any of these Regulations, or the remanding, in custody or on bail, of any person charged with such an offence; . . .

This particular provision was probably easier to understand when the regulations were " in full swing," but it seems to us that for the purposes of the Motor Fuel Order it will not have any great relevance.

SLUM CLEARANCE: THE NEW OUTLOOK

Circulars 43 and 44/56 of the Ministry of Housing and Local Government, respectively entitled " Slum Clearance (Compensation) Act, 1956 " and " Slum Clearance—Simplification and Acceleration of Administrative Procedure," are to be welcomed as heralding more adequate compensation and greater expedition in slum clearance procedure. Each, however, raises certain points that are not immediately obvious.

1. The Slum Clearance (Compensation) Act, 1956, clearly adds to the compensation payable by local authorities. In the notes on s. 1 (3), contained in appendix I to circular 43, it is stated that " payments are to be determined and dealt with in all respects as if they were compensation on a compulsory purchase." The question arises whether the additional compensation is included as part of the conveyance, so as to attract increased stamp duty and legal fees. It appears that it will do so in compulsory purchase cases, in the same way that s. 35 payments, under the " Pilgrim " section of the Town and Country Planning Act, 1954, have been included in the compensation under the conveyance. But where the payment is in respect of a demolition or a closing order no conveyance is necessary.

An innovation under the new procedure has been to provide not only for a payment for a well-maintained house, to be paid where circumstances warrant when a direction is recommended by the Minister after inspection under clearance procedure, but also in cases where the house has been vacated on or after December 13, 1955, in pursuance of a demolition or closing order, or purchased compulsorily by a local authority under s. 3 of the Housing Repairs and Rents Act, 1954. In these cases the local authority have to consider the application, and if they reject it the applicant can appeal to the county court in accordance with s. 15 of the Housing Act, 1936, unless the applicant and the local authority agree to submit the matter to arbitration. Thus it appears that two different procedures will apply, depending on whether the order is a clearance or a demolition order, and it is to be expected, unless local authorities accept a low standard in relation to well-maintained houses, that there will be constant recourse to the courts.

2. Circular 44, which revises procedure, is a move to expedite slum clearance. Alternative maps are permitted, the supervision of the Minister in examining order documents is to be removed, and specific assurances in relation to notices under s. 41 (1) of the Housing Act, 1936, are no longer required. From the local government point of view this is a move for good. It is, however, to be hoped that the Minister, who has previously acted administratively in assisting local authorities in the preparation and submission of documents to himself, will not be too exacting or too narrow in his requirements as the judicial authority, especially because the authority to question his decision in legal proceedings is governed by para. 2 (2) (ii) of sch. 2 to the Housing Act, 1936, which requires as a pre-requisite of a valid objection " that the interests of the applicant have been substantially prejudiced by any requirements of this Act not being complied with."

R.P.C.

TABESNE AN ROGUS

A point which may be increasingly important as cremation grows more popular is made by the town clerk of Twickenham, to whom we are obliged for the information given in his letter at p. 825 of last year's volume, about the approval of certain burial fees by the Minister of Housing and Local Government. That letter was prompted by our answer to P.P. 1 at 120 J.P.N. 714, on the subject of fees for placing cremated ashes in the earth or scattering ashes, in a burial ground provided under the Burial Acts. As we remarked in that answer, the word " interment " is used in the Acts without its being specified what is to be interred; in particular it is used in s. 34 of the Act of 1852, which empowers burial authorities to fix fees for interment. That Act shows, however, on its face that it was framed to protect public health against the dangers of improperly placing human bodies in the ground; inhumation is the primary meaning of the words " bury," " burial." and " interment," which appear to be used as if synonymous. As the town clerk says in his letter, it does not follow that a word must always be used with the same meaning though it is a rule of draftsmanship, and of ordinary interpretation of a statute or other document, that a word does not change its meaning in the middle. We also concede that the verb " inter " does not, by etymology, mean more than to place an object in the ground, without connoting the nature of that object, although (here again) all examples in the *Oxford English Dictionary* of its use and that of the noun " interment " (going back for centuries) use these words of human remains, the verb being a slightly pretentious, or perhaps one should say slightly exalted, synonym for " bury "—which is itself used in the latter part of s. 34 of the Act of 1852. Moreover, the words " inter " and " interment " are not used (unless perhaps facetiously) in other senses than that of inhumation, while " bury " is legitimately used in metaphors, to indicate covering from sight in some other way. A correspondent's letter can be " buried " on the recipient's table, as easily as a dog can bury a bone, but Caesar's bones, albeit after cremation, were to be interred with his good deeds. It can indeed be suggested that the argument for supposing that s. 34 does not extend to the products of cremation is *a fortiori*, since the word " interment " is combined with " burial " in s. 34, while the words " bury " and " burial " are used alone in s. 4, upon which *In re Kerr* [1894] P. 284 arose, the case which decided that cremated remains were not a " body."

Etymology, however, and metaphor are a less certain guide to the meaning of words as used in 1852 than recollection of the common law, as it stood when Parliament passed the Act in that year. Another half century was to elapse before Parliament provided for cremation, and as late as 1882 it was declared by Mr. Justice Kay to be " a very considerable question . . . a question I am not going to decide " whether burning a human body was lawful: *Williams* v. *Williams* (1882) 51 L.J. Ch. 385. This was a civil action; the plaintiff having burned a deceased person's body as directed in his will sued the executors for the expense of doing so; the action failed on the ground of fraud, so that the lawfulness of the burning did not have to be decided. Two years later, the question came up in criminal proceedings, and had to be decided: *R.* v. *Price* (1884) 53 L.J.M.C. 51. The facts were even stranger than those in *Williams* v. *Williams*, *supra*. William Price had in his house the dead body of a child five months old, of which he was said to have been the father. He did not register the death, but by some means not stated in the report the coroner was made aware of it, and gave Price notice on a Saturday that an inquest would be held on Monday, unless a medical certificate of the cause of death was forwarded. On Monday, Price took the body to a field of his own, put it into a cask of petroleum, and set this on fire. A crowd collected: once more, a gap in the story arouses curiosity. The field was " some distance " from a small town, and Price would surely not have made his purpose widely known—what brought the crowd? The crowd covered the burning body with earth; the flames were extinguished, and Price was brought before the magistrates and committed for trial on two charges, namely having attempted to prevent an inquest, and having attempted to burn the body. At Cardiff Assizes he was undefended, but was acquitted on both charges; on the facts, this seems surprising as regards the alleged attempt to prevent an inquest, but for this part of the verdict the jury may have had some reason not apparent on the face of the report, which is mainly concerned with the other charge. The report takes the unusual form of reproducing in full the charge of Stephen, J., to the grand jury: the reporter says that the Judge left the case to the jury at the trial " directing them in the terms of his charge to the grand jury." (It would be interesting to know what a Glamorganshire petty jury made of it, beyond treating it as virtually a direction to acquit). In the nature of things, *R.* v. *Price* is more or less forgotten now, dealing as it does with common law which had been replaced by statute at the beginning of this century. We have indulged in digression from the subject we set out to discuss, with the desire of reintroducing to our readers Mr. Justice Stephen's charge to the grand jury, which is not only a masterly exposition of the common law, but also a masterpiece of English prose, not unworthy to rank with the last chapter of *Urn Burial* itself.

To come back to our subject, Mr. Justice Stephen held that burning a human body was not in itself an offence at common law; he indicated that the neglect to deal with this method of disposal, either way, might be due (in effect) to oversight. Inhumation had come to be associated with religious ceremonies; the right to participate in these was a valued privilege, governed more by ecclesiastical than by common law. The law therefore did not interest itself in the fate of the body of a non-Christian dying in this country, or a body which was excluded from Christian burial for some other reason. Burial was, said the learned Judge, " the only [method of disposal] contemplated by civil and ecclesiastical law."

It is therefore plain that a fee for placing cremated remains in a burial ground cannot have been in the mind of Parliament in 1852. Does this mean that such a fee can not be included, even now, in a table of fees under s. 34 of the Burial Act, 1852? The town clerk tells us that such tables have been approved by the Minister of Housing and Local Government, and indeed that interment of ashes is now also included in the model table of fees issued from the Ministry in November, 1954. We had not previously been aware of this. We can not regard as beyond the range of doubt the *vires* of a fee, purporting to be charged by virtue of an Act which would not have been held to authorize the fee at the time the Act was passed, but we do not suppose the fee will be challenged in the courts. It can, according to the model table, take either of two forms. Where an exclusive right of burial in a grave or vault has been already purchased, there can be a fee for placing cremated remains therein. Or the fee can be charged for the exclusive right of burial of cremated remains in an earthen grave in respect of which such rights have not heretofore been granted. The model table of fees does not recognize burial of cremated remains in a common grave. Nor does it include a fee for scattering ashes: clearly s. 34 of the Act of 1852 can not, upon any interpretation, be stretched to authorize this last-mentioned fee.

Within the limits of the model table, if a burial authority does fix a fee for allowing cremated remains to be buried in a ground provided under the Burial Acts, we do not (as we have already said) expect the fee to be challenged in the courts, because nobody will have a motive for treating the purely legal point as a ground for objection. The approval does in effect recognize what the personal representatives of the deceased person wish to do, protecting them from an overcharge on the one hand and on the other hand from being kept out altogether.

What is said in this article, however, and in the town clerk's letter, does not change the effect of our answer at p. 714. The burial authority in that case said they were demanding "the normal interment fee," so it was evident from the language of the query that they had not purported to include a fee for burying ashes among those approved by the Minister; they had moreover avowedly taken to charging a fee for scattering, which was outside their powers altogether. Their action was thus not supported by even the appearance of legality.

UNFINISHED

As they journey into the New Year those concerned with local government will take with them many unresolved problems: it is permissible to hope that 1957 will be the year of decision for some at least of these matters, if only to divert into other channels the energies of those who have solutions of their own to propound, and who, so long as a decision is deferred, will undoubtedly continue to spend a good deal of time and money on the preparation and presentation of their views.

These are some of the unanswered questions:

The Review of Local Government and Local Government Finance

The Report of the Ministry of Housing and Local Government for 1955, published in October, 1956, reminds its readers that the Minister announced in the House on March 22, 1955 that a review of local government finance was to take place. He made a further reference on June 30 when he said "... the review which we are undertaking will be a most comprehensive review ..." It should certainly be because in the ensuing 18 months nothing has come out of the Ministry, so there has been plenty of time to be very comprehensive indeed. The prospect is improving however: in the debate on the Address on November 7 last Mr. Enoch Powell, Parliamentary Secretary to the Ministry of Housing and Local Government said:—"I can reaffirm that it is the Government's intention that their broad proposals on this subject should be made known by the end of this year." And on December 11 Mr. Sandys said "I hope to make a general statement on local government finance quite soon." By the time these words are read therefore there is a reasonable hope that a White Paper may have appeared.

It will be extremely interesting to see whether in such a document there are repeated the suggestions of the Committee appointed to investigate the operation of the exchequer equalization grant that the system of capitation payments should be abolished and replaced by equalization grants calculated and paid separately to every qualifying county district. Were this idea again put forward it would be no less interesting to know what the county districts themselves thought about it because some really startling changes in rate levels, both up and down, would ensue: their reactions could also be awaited with lively curiosity to the further suggestion of the Committee that any such change should be linked with a limitation of expenditure of the districts determined by a questionable formula based on average expenditure of similar authorities, this being held necessary on the ground that much of district council expenditure is not subject to direct government control because it does not attract specific grants. In November, 1954, at the inception of the talks about local government reform between the Minister and the representatives of the local authorities he said that, in his opinion, it would not be fruitful to embark on any extensive reform unless there existed some broad measure of agreement between the local authorities themselves. If this principle is applied to the determination of a proposal about revised grants to county districts on the lines of the Committee's suggestions we anticipate a verdict of no change.

So much for the financial aspect. The White Paper on Local Government published in July last concerned itself only with the areas and status of local authorities. The opinion was expressed that there was no convincing case for radically reshaping the existing form of government in England and Wales but suggestions were made for dealing with the creation of new county boroughs, the extension of existing county boroughs, the revision of county and county district areas and the organisation of the conurbations. The authors thought that functions and finance could be left aside and considered separately from areas and status. In this, in our opinion, they were wrong and will be adjudged wrong by the local authority associations. Areas and functions are linked inextricably and adequate finance is vital. There is perhaps no great harm in making suggestions separately under each head but the final determination must deal concurrently with all aspects.

Measures to Limit Capital Investment

While this is a matter which the Government may regard as decided and concluded the local authorities, who are being punished unmercifully by the Chancellor's policy, are gravely dissatisfied and a stream of angry protests is coming from all sections. The authorities do not at all reject the need in present economic circumstances for restriction of capital expenditure but contend that this restriction can be achieved without making lenders a present of vast sums of money. The already mentioned Report of the Ministry of Housing and Local Government is, however, quite complacent on this point. It reminds us that in his statement on the general economic situation in July, 1955, the Chancellor appealed to local authorities to hold back their schemes for capital expenditure as far as possible: this appeal was later reinforced by a message sent to all local authorities over the signature of the Chancellor and the Minister of Housing and Local Government on October 26, 1955, asking for an immediate review of capital expenditure for the period to March 31, 1957 with the aims of ensuring that expenditure in 1956–57 would not exceed that of 1954–55 and that no new works would be undertaken unless the authority were satisfied that the works were urgently necessary to meet the needs of the area. The Report then goes on somewhat smugly to remind us that this action was supported by monetary measures—these of course were nothing more than the crude idea of refusing to issue loan moneys from the Public Works Loan Board to local authorities. We have stated previously our view on this wonderful thought but because the Ministry Report, issued as recently as October last, can still see nothing wrong with it we venture to repeat and amplify a little our earlier expressions.

The key is in the Report itself which says "General control over local authorities capital formation is exercised through the sanctioning of loans." If the administrators know what they

are doing—and it may be true that none of their activities have ever led us to think otherwise—this weapon is all they need. They are in possession of quantities of statistics, prepared for them by local authorities and others, which should enable them to determine in the light of the general economic position of the country the total amount of resources which can be devoted to capital expenditure on these services for which local authorities are responsible: having made such a determination the Whitehall formula experts, who are capable of some wonderful and complicated figuring at need, should find it easy enough to deal with the relatively simple matter of the apportionment of these scarce resources.

A second argument used was that money which the P.W.L.B. lent was raised by Treasury bills, which when held by the banks could be the basis of credit expansion and cause inflation: it was necessary to avoid inflation and therefore the P.W.L.B. must not lend. This line of reasoning conveniently ignored the fact that Treasury bills were a quite unnecessary part of the picture because a non-inflationary long term Government loan could equally well have supplied the necessary funds. Such a loan would have obviated the need for so many authorities to pay interest at 6½ *per cent.* or more to private mortgagees.

In our view therefore adequate powers to restrict expenditure exist in the form of approval of capital programmes and loan sanctions. We believe that the only thing which the present policy has achieved which could not have been better done in another way is to ensure considerable waste of the cash of the taxpayer and the ratepayer, that it has either developed out of a miasma of muddled thinking or deliberate humbug and that those in control should have the courage of their opinions—in other words that necessary restrictions should be openly stated and openly enforced.

PERSONALIA

APPOINTMENTS

Mr. John Lewis James Price has been appointed clerk to Caerphilly, Glam., urban district council. He is 43 years of age and is married with one child. Mr. Price's previous appointment was clerk to Tredegar, Mon., urban district council. He served his articles with Mr. Edward Roberts, then town clerk and clerk of the peace for Merthyr Tydfil, for five years from February, 1938. Mr. Price's articles were interrupted by five years' war service. He passed his Law final examination in March, 1947, and was admitted on July 1, 1947. Since January, 1950, Mr. Price had been engaged as clerk, solicitor and chief executive officer of Tredegar urban district council. Mr. Price previously served Merthyr Tydfil county borough for 18 years: as administrative assistant and committee clerk from 1931–1937; senior administrative and legal clerk from 1937–1946, and assistant solicitor and chief administrative assistant from 1946–1950. In 1930 Mr. Price had a short spell as a general clerk in the clerk's department of Breconshire county council.

Mr. Eric Hankinson, A.C.I.S., has been appointed deputy clerk to Hoddesdon, Herts., urban district council. Mr. Hankinson has for some years been chief assistant in the town clerk's office at Sale, Cheshire, where he has been employed (apart from six years' war service) for the past 17 years, prior to which he was with Runcorn, Cheshire, urban district council. In addition to all his other duties as chief assistant, Mr. Hankinson has undertaken a very large share of all the administrative and legal work in connexion with the completion of the council's extensive post-war housing programme, involving some 1,600 new dwellings. Mr. Hankinson took up his new post on New Year's Day.

Mr. S. R. Dodd, conveyancing clerk in the legal department, Plymouth city council, has been appointed law clerk to the borough of Royal Leamington Spa, Warwicks. The vacancy in this post was created by the promotion of Mr. N. A. James, senior legal assistant in the department of the town clerk, Mr. James N. Stothert, to the new post of assistant town clerk. The former deputy town clerk, Mr. G. K. Waddell, has obtained an appointment with the Colonial Office as Local Government Administrator in Georgetown, British Guiana.

Mr. E. R. Griffiths has resigned from the post of assistant solicitor to Leicester county council. He has taken up an appointment in industry. The position will be filled by Mr. G. Harrison who is at present assistant solicitor to Middlesex county council.

Mr. A. F. Parsons, LL.B., has been appointed assistant solicitor to Chester county borough council.

Mr. K. W. Launchbury has been appointed chief assistant to Mr. Roy H. Weeks, clerk to the Bullingdon and Bampton East, Oxon., magistrates' courts. He has had extensive experience in magisterial work, having been previously employed in the Oxford city court, and prior to taking up his present position had been employed as a part-time assistant covering three petty sessional divisions in Oxfordshire. Mr. C. J. Hall has been appointed second assistant in the same office. He was previously employed in the office of the clerk to the justices at Steyning, Sussex.

Mr. H. G. Petersen, who had 36 years' service in the office of the clerk to the justices for the county borough of Tynemouth, resigned his position in October, 1956. Mr. Robert Forster, who had been in the clerk to the justices office, South Shields, for 22 years, was first assistant on his appointment to succeed Mr. Petersen as chief assistant at Tynemouth.

Mr. Robert Mark, chief superintendent of Manchester city police, has been appointed chief constable of Leicester city police force. Mr. Mark is 39 years of age. He joined the Mancester city police in July, 1937 and rose from the rank of constable to chief superintendent during the period 1947–1955. During the war he served in the Royal Armoured Corps (1942–1947) and rose to the rank of Major. Mr. Mark succeeds Mr. Neil Galbraith, aged 45 years, who has been appointed chief constable of Monmouthshire. Mr. Galbraith was assistant chief constable of Monmouthshire before he was appointed chief constable of Leicester in October, 1955. He formerly served with the Lancashire and Hertfordshire constabularies.

Mr. H. Howard Karslake, F.R.V.A., F.R.I.C.S., F.I.Hsg., assistant valuer (rating) to London county council, has been elected chairman of the Rating Diploma Section of the Royal Institution of Chartered Surveyors. Mr. Karslake is a member of the council of the Rating and Valuation Association, the author of a number of technical publications and well known as a lecturer on professional subjects.

OBITUARY

Mr. Edward Godfrey, borough treasurer of Ilkeston, Derbyshire, for the past 26 years, has died at the age of 58.

Mr. John M. Learmont, former chief superintendent of the Liverpool city police force, has died at the age of 76.

NOTICES

The next court of quarter sessions for the county of Kent will be held on Monday, January 7, 1957, at the County Hall, Maidstone commencing at 10.45 *a.m.*

The next court of quarter sessions for the city of Coventry will be held on Monday, January 7, 1957 at the County Hall, Coventry, commencing at 11 *a.m.*

The next court of quarter sessions for the borough of Southend-on-Sea, Essex, will be held on Monday, January 7, 1957.

The next court of quarter sessions for the county of Pembroke will be held on Monday, January 7, 1957. The adjourned quarter sessions will be held on Monday, February 11, 1957.

The next court of quarter sessions for the city of Winchester, will be held on Wednesday January 9, 1957, at the Guildhall, Winchester, at 10.45 *a.m.*

The perpetual court procession
Of the oldest profession
Has at last focussed public attention
On the problem we never mention—
And given a new and urgent meaning
To street cleaning.

J.P.C.

REVIEWS

Practical Forensic Medicine. By Francis E. Camps, M.D., Reader in Forensic Medicine (University of London) at The London Hospital Medical College and W. B. Purchase, C.B.E., M.C., M.B., D.P.H., Barrister-at-Law, H.M. Coroner for the Royal Household and the County of London, Lecturer in Forensic Medicine at the University of London, Lecturer in Criminal Law, Royal Naval College, Greenwich. With a foreword by H. Edmund Davies, LL.B., B.C.L., one of Her Majesty's Counsel; Recorder of Cardiff. London: Hutchinson & Co. (Publishers) Ltd., 178–202, Great Portland Street, W.1. Price, 75s.

In his foreword, Mr. H. Edmund Davies refers to the " massive experience and profound knowledge " of the authors, and commends this new work to members of both the medical and the legal professions. It is intended mainly for the use of medical practitioners and advanced medical students, but it should prove invaluable to lawyers concerned with medico-legal questions arising in both civil and criminal proceedings. Superior police officers may also turn to it for much assistance in some of their most difficult cases, and we note that the learned authors acknowledge help given to them by Scotland Yard and other police forces.

The book covers a wide field on thoroughly practical lines. Most medical practitioners have to give evidence sometimes, and if they are to do justice to themselves and their profession they need to know what is likely to be required of them, how to prepare their evidence and how to express themselves simply and convincingly. This book tells them just what they need to know and to do in various situations.

One difficult task for the doctor is that of examining the motorist suspected of being " drunk in charge." There is some useful guidance here, and it is refreshing to find these two distinguished authors admitting that whether a person is so much under the influence of drink as to be unable to perform his normal acts with his normal comprehension, care and completeness, is not a matter which only a doctor can decide, and that the views of a police officer of experience may be of equal or greater value, especially since the police officer may have seen the condition of the person earlier than the doctor. That does not belittle the value of medical and other scientific evidence, which the courts rightly treat with respect, but it does recognize the weight that ought to be attached to the police evidence.

English law, say the authors, seems to maintain a conservative tendency to disregard scientific evidence in favour of plain evidence. That is no doubt true, but courts are beginning to pay more heed to expert evidence about alcoholic content in the blood or the urine and to evidence about blood groups and inferences to be drawn from proved facts which the court can understand. In their treatment of bastardy proceedings, the authors observe that at one time it was thought that serology would be accepted as of great evidential value in these cases, but in practice it is not greatly used. That, no doubt, is largely because the woman cannot be compelled to submit herself or her child to blood grouping, and she can never prove paternity by this means, whereas the alleged father might prove that this could not be his child by this woman. What is pointed out here, however, is that when allegations are made against two different men it may be possible to exclude one of them at least.

Forensic medicine naturally has a good deal to do with crime, and this book treats of homicide, wounding and many other offences, showing how the medical man should approach them, what signs he should look for and what inferences he should draw from what he observes. Illustrative cases are given, which add point and interest to what is stated, and the book is profusely and admirably illustrated with photographs and diagrams. Of course, there is much besides crime in this comprehensive work, for civil actions often involve medical as well as legal problems. In such a modern work we expect to find, as we do, that aeroplane accidents are discussed.

The second part of the book is devoted to toxicology, and the various statutes and regulations relating to poisons and dangerous drugs are dealt with. There is a valuable " collectanea of poisons " in tabular form stating, with respect to each; nature and uses, symptoms, fatal dose, cause of death, fate in body, post mortem findings, and material to be collected for analysis, and certain poisons and groups of poisons are the subject of separate treatment. In the appendices there is useful information about forms and certificates, and the glossary will be of service to many readers.

What the authors say about medical examination of motorists might well be applied as a general principle in preparing and giving medical evidence. " His [the doctors] object is to help the court and he is not simply on the side of the party who has called him." In the pursuit of this ideal the doctor, and we may add the lawyer, may turn with profit to this book.

Rent and Mortgage Interest Restrictions. By G. Avgherinos and the Editors of " Law Notes." London : " Law Notes " Publishing Offices, 25 & 26, Chancery Lane, W.C.2. Price £2 12s. 6d. net.

Almost from the beginning of the Rent Restrictions Acts the publishers of *Law Notes* have brought out a text-book upon them, which has several times been noticed from the bench. Five years have passed since the twenty-second edition (this is the twenty-third) and in that interval there have been important changes in the statute law and numerous judicial decisions on the Acts. This has meant rearranging many of the notes and introducing new material, with some increase in the size of the book. Many of our readers will have been familiar with the work in earlier editions, but it may be mentioned that its general scheme is that of an introductory sketch of 40 pages followed by the text of the Acts, annotated section by section. These Acts now range up to 1955. Every lawyer, we suppose, has his own preference among works upon the Rent Restrictions Acts, and his own idea on the question whether it is better to deal with statutes section by section or in narrative form. We are sure that those persons who prefer annotation section by section, and those who have been accustomed to use the *Law Notes Guide* in the past, will find this new edition as helpful as its predecessors. Any practitioner who is not familiar with it already can equally be advised to add it to his shelves. It has amongst other things the merit of bringing treatment of these complicated Acts up to date, and of setting out their effect in convenient compass.

In Limine. An Address on Advocacy. By A. W. Cockburn, Q.C. Obtainable from: The Dean of the Faculty of Law, The University, Southampton. No price stated.

This address to the Christ Church Law Club was delivered in May, 1952, but only came to our notice last month. It has not been printed, and seems not to be on sale, but has been reproduced by a mechanical process and is (we gather) obtainable from the Dean of the Faculty of Law at the University of Southampton. It treats the subject of advocacy from a practical point of view, offering suggestions about good ways (and other ways) of presenting and conducting a case in court. It begins by referring to the simpler class of criminal case, and goes on to deal with some general matters—particularly the ethics of advocacy. This is a field which has been ploughed many times before, but the learned speaker illustrates his points from his own experience as chairman of the London Sessions and also from other authors—notably Quintilian. We have found it not merely instructive but also stimulating.

MISCELLANEOUS INFORMATION

LOCAL GOVERNMENT LEGAL SOCIETY

The annual meeting of the Local Government Legal Society took place on Saturday, November 17 at University College London. In the morning Professor R. C. FitzGerald, LL.B., Dean of the Faculty of Laws of University College, gave a talk on recent trends in local government. At the Annual Luncheon, Sir Edwin Herbert, K.B.E., President of The Law Society, in proposing the toast to the Society emphasised that a salaried solicitor had a special relationship with the local authority who employed him which was different from that which existed between a local authority and other employees because the solicitor had special responsibilities as a member of the profession. Mr. R. C. F. Hickman, the Chairman of the Society, replied. The health of the Guests was proposed by Mr. F. Dixon Ward (Vice-Chairman) and Mr. Desmond Heap, PP.T.P.I. replied on behalf of the Guests who included representatives of the Society of Town Clerks, Civil Service Legal Society, Scots Local Government Legal Society, County Councils Association and other bodies.

The General Meeting in the afternoon was attended by about 70 members and the following appointments were made for the ensuing year:—

Chairman: Mr. F. Dixon Ward, Town Hall, Hove.
Vice-Chairman: Mr. R. N. D. Hamilton, County Hall, Aylesbury, Bucks.
Hon. Treasurer: Mr. D. E. Almond, Corporation Offices, Lincoln.
Hon. Secretary: Mr. J. D. Schooling, Shirehall, Worcester.

" Recollection at fault "
Is the phrase that's applied
When you don't want to say
That a witness has lied. J.P.C.

MAGISTERIAL LAW IN PRACTICE

Liverpool Daily Post. December 13, 1956

UNPROTECTED FOOD: SHOP OWNER FINED

First City Case under new law

The first Liverpool prosecution under the Food Hygiene Regulations of 1955 came before Mr. Arthur McFarland (Liverpool Stipendiary Magistrate) yesterday when the proprietor of a grocer's shop appeared on two summonses.

Fining Mrs. Winnie King, trading as J. J. King, at 126 Great Howard Street, Liverpool, £15, the Stipendiary Magistrate said: " I hope these regulations will be carried out strictly by persons engaged in selling food."

Mrs. King admitted that on October 26, she failed to take all reasonable steps to secure compliance with the regulations. The manager, it was allegea had failed to take reasonable steps to protect the food from the risk of contamination and to keep the walls and floor of the premises clean.

Mr. A. J. Stocks, prosecuting said the new regulations provided a code of hygiene which replaced the code under the Food and Drugs Act of 1938.

The proceedings were brought by Mr. W. H. Wattleworth, Chief Public Health Inspector.

On October 26 Mr. James Tighe, senior public health inspector of shops visited the shop. The manager was on duty alone.

Cakes and Biscuits in open trays

Cream and fancy cakes, iced buns, and marshmallow biscuits were displayed on the counter in open trays ana tins. A man customer was smoking and coughing near the cakes, while making a purchase.

Cooked meat and cheese were displayed on an open counter only partly covered with a muslin cloth. The under-surfaces of the counter were dirty.

Unwrapped bread was stored in an open cardboard box under a counter next to a box in which a cat was sitting. Dirt was hanging from the tops of a wall fixture below which was an open 1cwt. bag of sugar.

Congealed dirt and grease were adhering to the blades of two cutting knives on the provisions counter.

There were grease and dirt on the brass weights used in the weighing of provisions and groceries.

Dirt and grease on bacon machine

Dirt and grease were adhering to the metal parts of the bacon slicing machine and there was a dirty and worn piece of plywood shelf on to which the sliced bacon was received.

Refuse and waste were kept in an open bin and wooden drum under the provisions counter. These containers were dirty and unsuitable, and there was fly infestation.

The walls and floor of the shop were dirty and the portion of the walls and woodwork around the wash-hand basin was particularly dirty and were covered with slime.

Mr. Stocks said Mr. Tighe saw Mrs. King on October 30, told her of the infringements and asked her why the conditions had been allowed to continue since a warning letter was sent on April 24.

Mrs. King replied: " We cannot trace this letter as we moved our offices in July. Everything you ask to be done will be done. I think you are quite right."

Much improvement on premises now

Mr. Stocks added that since that interview and the commencement of proceedings much improvement had been effected on the premises.

Mrs. King in court said sliced bacon was always received on to grease-proof paper. All improvements had been carried out long before the summonses were served. A great deal more had been done than even the inspector asked for.

Replying to the Stipendiary Magistrate, Mrs. King said the premises were old and hundreds of lorries, cars and vans were passing every minute of the day making it difficult to keep dust away when the shop door was open.

Mrs. King said she had never seen the warning letter mentioned by Mr. Stocks.

The Food Hygiene Regulations, 1955, (S.I. 1955, No. 1906) were made by the Minister of Agriculture, Fisheries and Food and the Minister of Health, acting jointly, under ss. 13 and 123 of the Food and Drugs Act, 1955, and other powers. The Regulations came into force on January 1, 1956.

They lay down requirements in respect of (i) the cleanliness of food premises and stalls, etc., and of apparatus and equipment, (ii) the hygienic handling of food, (iii) the cleanliness of persons engaged in the handling of food and of their clothing and the action to be taken where they suffer from, or are carriers of, certain infections, (iv) the construction of food premises, the repair and maintenance of food premises, stalls, vehicles, etc., and the facilities to be provided, and (v) the temperature at which certain foods that are particularly liable to transmit disease are to be kept in food premises.

They do not apply to slaughterhouses and cold stores or to a number of other types of premises (*e.g.*, dock premises, warehouses, carriers' premises) except in so far as activities such as staff canteens or retail shops, etc., may be carried on there.

Regulation 33 provides that any person guilty of an offence against the Regulations shall be liable to a fine not exceeding £100 or to imprisonment for a term not exceeding three months, or to both, and, in the case of a continuing offence, to a further fine not exceeding £5 for each day during which the offence continues after conviction.

Regulation 34 applies s. 113 of the Act (which deals with the procedure when the person against whom proceedings are brought alleges that the contravention was due to the default of some other person) to proceedings under the Regulations.

In any case in which a person is convicted of an offence against the Regulations in respect of catering premises (defined in s. 135 (1) of the Act as premises where, in the course of a business, food is prepared and supplied for immediate consumption on the premises) the court has power to disqualify that person from using those premises as catering premises for a period not exceeding two years. Application may be made for the removal of the disqualification at any time after six months from the date on which the order came into force. If the application is refused no further application may be made within three months of the date of the refusal (s. 14).

The Yorkshire Post. October 31, 1956.

MAN IN GAOL MUST GIVE UP £100

Taken from Leeds Prison to Harrogate Magistrates' Court under a Home Office order yesterday, Arthur Caleb Stanley, a Harrogate man, serving a five-year sentence, heard a direction that £100 found in his possession when he was arrested in June should be handed to Harrogate and District Co-operative Society.

It was stated by Mr. J. E. Wilson, for the police, who asked how the money should be disposed, that the Society's warehouse was broken into and 362,800 cigarettes and tobacco worth £3,198 were stolen. Stanley was arrested and eventually sentenced at the Assizes at Leeds for receiving stolen property. He was alleged to have ferried stolen cigarettes to London by road.

Stanley denied that the money was part of the proceeds of the theft. He said he had drawn out his savings from the Post Office bank and cashed a number of Savings stamps.

Where any property has come into the possession of the police in connexion with any criminal charge a magistrate's court may, on application either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to be the owner. If the owner cannot be ascertained the court may make such order with respect to the property as may seem meet (s. 1 (1) Police (Property) Act, 1897).

The proceedings are by order on complaint (s. 43 of the Magistrates' Courts Act, 1952). The officer of police or the claimant should take out a summons calling upon the other party to show cause why an order should not be made under the Police (Property) Act.

Within six months from the date of the order legal proceedings may by taken for the recovery of the property by any person against any person in possession of property delivered by virtue of the magistrates' order, but on the expiration of those six months the right to take those proceedings ceases (s. 1 (2) of the Police (Property) Act, 1897).

In this case the man was taken to the court from prison under a Home Office order. Section 22 (2) of the Prison Act, 1952, provides that " the Secretary of State may—(*a*) if he is satisfied that the attendance at any place in Great Britain of a person detained in England in a prison is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; (*b*) if he is satisfied that a person so detained requires medical or surgical treatment of any description, direct him to be taken to a hospital or other suitable place for the purpose of the treatment; and where any person is directed under this sub-section to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison in which he is required in accordance with law to be detained." Rule 22 of the Prison Rules, 1949, (s. 9, 1949 No. 1073) provides that " a prisoner whom the Secretary of State has directed to be taken to any place shall while outside the prison be kept in the custody of prison officers: Provided that a prisoner directed to be brought before a court of summary jurisdiction may while outside the prison be in the custody of police officers."

NEW YEAR REFLECTIONS

This is traditionally the season for reviewing the past and looking forward to the future; for wiping the page clean, turning over a new leaf and starting afresh. Some time between December 31 and January 1 the Old Year fades imperceptibly into the New; we say advisedly "some time between" those dates, because we have it on the highest authority that time is infinitely divisible. In *Hickman* v. *Peacey* [1945] 2 All E.R. 215, Viscount Simon, L.C., used the following words:

> "The mathematical theory of infinitesimals is a difficult topic, which I feel ill qualified to expound. Modern science does not, I believe, dispute that time is infinitely divisible, and I am prepared, with due humility, to assume it—but without dogmatism."

Although this is a period for philosophical reflection, we need not labour the point, noting only that for most ordinary people 1956 ended at midnight on December 31, and that 1957 began at that same moment. How that particular point of time is to be ascertained and measured is (in the words of the late Lord Chancellor, in the case quoted above) "a problem of considerable refinement in the realm of physics and philosophy."

For the young and light-hearted the transition is a matter for celebration and rejoicing; for the elderly and serious-minded a moment (in Hamlet's words) to:—

> "Repent what's past; avoid what is to come."

Artificial and conventional as the dividing line may be, there is a significance attached to the chimes of midnight, on the last day of the year, which is without parallel at any other time or on any other date.

Anybody who pauses a moment for reflection, as the New Year dawns, will be struck by the dichotomy between hope and experience, between precept and practice—in the language of St. James, between faith and works. Those New Year Resolutions that we made 12 months ago—what has become of them? And those that some of us formulated at midnight on Monday the 31st—how will they turn out? Not at all, we may be sure, as we expected 12 months ago, or as we now intend. Not only the cynics, but all analytically-minded persons, may well ask themselves what is the use of starting the New Year with high-minded intentions which experience shows we shall be defective in carrying out?

There is a corresponding distinction between ethics and law. The ethical philosophers, no less than the Founders of the great world-religions, have taught that right-thinking leads to right action, and evil thoughts to evil deeds. This basic idea is common to such widely differing religions as Christianity and Buddhism; it is to be found in many passages in the New Testament, and in the *Dhammapada* where the fundamental, doctrines of the Buddha are enshrined, we find the words:—

> "All that we are is the result of all that we have thought; it is made up of our thoughts."

That is to say, the thought-process is part of the chain of causation, which works relentlessly throughout time and space, producing effects which nothing can alter, nothing avoid; as inevitable as the effects produced by our acts, words and deeds. Repentance and atonement—those twin pillars of the Semitic Religions—have no place in the ruthlessly logical teachings of Hinduism and Buddhism, according to which effects inevitably follow causes, and evil in thought, word or deed must, necessarily, continue to have repercussions everywhere, through all the ages. Edward Fitzgerald expresses the same idea in his adaptation of the *Rubaiyat of Omar Khayyam:*

> "The moving finger writes and, having writ,
> Moves on; not all thy piety or wit
> Shall lure it back to cancel half a line,
> Nor all thy tears wash out one word of it."

These two contrasting ethical teachings lead on to the age-old controversy between freewill and determinism, which (in the words of Viscount Simon) we feel "ill qualified to expound." But it may be interesting and profitable to consider how both differ, fundamentally, from the precepts of the English criminal law. *Mens rea*, as we all know, is a necessary constituent of all common law crimes, but it cannot stand alone; the guilty intention must be followed by some overt act. Even in the famous passage of the Statute of Treasons, 1351 (25 Edw. III, c. 2) the words "compassing or imagining the death of the King" are later qualified by the requirement that the accused "be thereof proveably attainted of open deed." And the *dictum* of Brian, C.J. (Y.B. 17 Edw. IV, fo. 2) is well-known to every student:

> "The thought of man is not triable, for the Devil himself knoweth not the thought of man."

In other words, religion and moral philosophy regard a guilty thought as reprehensible, as an evil in itself; the criminal law, however, does not consider *mens rea* as punishable unless and until it is translated into an *actus reus*. And in most cases (since "the thought of man is not triable") the criminal act itself is regarded as sufficient *prima facie* proof of the guilty mind, for every sane adult is presumed to intend the natural consequences of his conduct.

Thus the old-fashioned habit of making New Year Resolutions, otiose and sterile as it may sometimes appear, is directly related to the principles of ethical behaviour. To take a few moments off from the bustle of daily business—to reflect upon the meaning and significance of the new, clean page in the blotted copybook of life—is salutary and refreshing. And even such moralizing as this, inappropriate and vexatious as it might be at other times, may be excusable at this season in the course of conveying, to the sorely-tried readers of this column, our fervent wishes for a Happy New Year.

A.L.P.

BOOKS AND PAPERS RECEIVED

The Pharmaceutical Society of Great Britain, Calendar 1956–1957. London. 17, Bloomsbury Square, W.C.1. Price 17*s.* 6*d.*, postage 10*d.*

Northern Ireland Fire Authority. Report from April 1, 1953–March 31, 1956. 43, Castle Street, Lisburn.

The Inspector. Official Journal of The Institute of Shops Acts Administration. Series IV. Vol. 2. No. 8.

Trial by Jury. By The Honourable Sir Patrick Devlin. Published under the auspices of The Hamlyn Trust, London. Stevens and Sons, Ltd., 119 and 120, Chancery Lane, W.C. 2. Price 15*s.* net.

A History of English Criminal Law and its Administration from 1750. Vol. 2. The Enforcement Of The Law. Vol. 3. The Reform of the Police. By Leon Radzinowicz, LL.D. London. Stevens & Sons, Ltd., 119 and 120, Chancery Lane. W.C.2. Price £4 4*s.* each volume.

Annual Report of the Council of the Central After-Care Association. 1955. H.M. Stationery Office. Price 1*s.* net.

PRACTICAL POINTS

All questions for consideration should be addressed to " The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy Order—*Jurisdiction—Magistrates' Courts Act*, 1952, *s.* 51.

A woman lodged a complaint for a bastardy order, and at the time was living within the jurisdiction of my court. At the hearing she gave her address again as that which was within the borough, but it has subsequently transpired that she was in fact residing outside the borough at the time of the hearing. The man has brought this matter to my notice and the woman has admitted having given the wrong address to the court at the hearing, but says that this was due to a misunderstanding.

Having regard to the terms of s. 51 of the Magistrates' Courts Act, 1952, and especially to the wording in subs. (2) thereof, as follows:—" . . . a complaint such as is mentioned in the preceding sub-section shall not be heard except by a magistrates' court acting for the petty sessions area in which the mother resides," I shall be glad to have your opinion (1) whether the order made by my court in this case is valid, or was made without jurisdiction? (2) if the latter, will it be appropriate for the man to apply for the discharge of the order in my court, or should he take proceedings in the High Court? (3) it is possible that the man may take no action to obtain the discharge of the order, and in this event would it be wise to enforce payments in my court, if the answer to (1) above is to the effect that the order is bad? I would suggest that in view of the implications arising as a result of the case of *O'Connor* v. *Isaacs and Others* [1956] 2 All E.R. 417; 120 J.P.N. 169 it would be a risky procedure for the man to be committed in respect of arrears as the justices may then find themselves faced with an action for damages for false imprisonment and for sums paid to the woman under the order if it had been made without jurisdiction. In these circumstances it seems to me that the woman might now take action in the area where she now resides to obtain an order in respect of which no question of jurisdiction can be raised and proceedings might be taken in my court to discharge our order at any rate as regards the weekly payments due thereunder under the terms of s. 53 of the Magistrates' Courts Act, 1952. G.W.C.B.

Answer.

1. Section 51 (1) of the Magistrates' Courts Act, 1952, requires that " an application . . . for a summons . . . shall be made by complaint," and s. 51 (2) refers to " a complaint such as is mentioned in the preceding subsection," *i.e.*, a complaint made on the application for a summons. It follows that it is the mother's residence at the time of application for the summons that is the criterion, for otherwise a mother applying for a summons at the very end of the time limit who was forced to move her residence through no fault of her own before the hearing would be deprived of her remedy. If this interpretation is correct, the order in this case would be valid.

2. Even if it were considered that the order was invalid, we think it is up to the man to take steps to have it quashed by appealing. Although the magistrates' court could discharge the order as far as the payment is concerned, it could not upset the finding of paternity.

3. The court could enforce payment. The justices in proceedings for enforcement cannot inquire into the validity of the order. (*See R.* v. *Lancashire JJ., ex parte Tyrer* [1925] 1 K.B. 200; 89 J.P. 17). We do not think that *O'Connor* v. *Isaacs*, *supra*, affects the position. (*See* the judgment of Romer, L.J., at p. 446, letter B).

2.—Dogs Act, 1906, s. 3—*Ownership of stray dog.*

A owns a dog. This dog is seized as a " stray " by the police. It is not wearing a collar with the owner's name and address thereon. It is detained by the police for seven clear days and is sold to B for 14*s.* (seven days keep at 2*s.*). Some days later A sees B walking with the dog, claims it as his and takes it from her for himself, refusing to pay B, apart from anything else, the 14*s.* she paid the police for the dog. I feel that as the dog was sold to B in accordance with the Dogs Act, 1906, s. 3, she then became the lawful owner of the dog, and that when A forcibly took it from B he may well have stolen the dog (Larceny Act, 1861, s. 18).

I would greatly appreciate your valued opinion. Should there be a decision on such a matter would you kindly quote same. HOUND.

Answer.

We agree that B became the lawful owner of the dog when it was sold to her in accordance with s. 3 of the Act. A commits larceny in taking it from her. We know of no decision on this matter.

3.—Licensing—*Lotteries on licensed premises—Small Lotteries and Gaming Act*, 1956.

Would you be good enough to enlarge on the statement in the last paragraph of the article at 120 J.P.N. 567 headed " Local Authorities and Gambling." I have always been under the impression that gaming or the holding of lotteries on licensed premises was prohibited by virtue of s. 141 of the Licensing Act of 1953. I have now been advised that provided the conditions as defined in ss. 23, 24 and 25 of the Betting and Lotteries Act, 1934, are complied with, a lottery may legally be held on licensed premises, since a lottery is not gaming and s. 141 only prohibits gaming. It is suggested that the reasons why s. 141 dealt only with gaming was that s. 22 of the Act of 1934 already dealt with lotteries. If this argument is correct it follows that the further lotteries defined in ss. 1–3 of the Small Lotteries and Gaming Act, 1956, are not unlawful and can similarly be held on licensed premises legally.

Section 4 of the Act of 1956 deals only with gaming and subs. (6) (*a*) of that section prohibits only " gaming and unlawful games " on licensed premises by the invocation of s. 141. This seems to support the view that only gaming is prohibited and not lawful lotteries. I think police have always considered that any form of both gaming and lotteries were illegal on licensed premises, and would be very averse from changing this point of view.

A further elucidation of this point would be greatly appreciated. JUFFO.

Answer.

We agree with the writer of the article that the Act of 1956 does not make specific reference to the use of licensed premises in connexion with lotteries, and that s. 22 of the Act of 1934 touches only lotteries which remain unlawful, having regard to the later provisions of that Act and, now, the provisions of the Act of 1956. The question which the writer left open, and you now raise, is whether the use of licensed premises in connexion with a lottery (lawful or unlawful) is within the prohibition in s. 141 of the Licensing Act, 1953, on the ground that a lottery is also gaming or an unlawful game. The contrary argument quoted in your letter, beginning with the words " It is suggested " will not hold water, because the Act of 1953 was pure consolidation, and the prohibition dates from 1828. It has always existed side by side with the law about lotteries. *Paterson* (1956 edn.) pp. 1061–2 mentions that drawing a sweepstake on football teams (clearly a lottery) was gaming (*Morris* v. *Baguley* (1937) B.T.R.L.R. 73) and in 15 *Halsbury* (2nd edn.) at p. 527 the case of *Munroe* v. *Kelly* (1911) 45 I.L.T. 179 is cited as deciding that the sale of goods by means of a wheel of fortune (admitted to be a lottery) was also an unlawful game for the purpose of proceedings under the Gaming Act, 1845. Further, s. 22 of the Act of 1934 shows that drawing for something not money can be a lottery. In *Bew* v. *Harston* (1878) 42 J.P. 808 it was held that where each participant paid 2*d.*, and with this money a rabbit was bought, which was then drawn for, this was " gaming " within the meaning of the Licensing Act, 1872. Whilst it might sound odd to argue that a drawing declared by Parliament not to be an unlawful lottery was nevertheless an unlawful game, there seems ground for saying that at least it may be " gaming." In other words, it must be carried on elsewhere than on licensed premises. This matter may have to be tested one day by an appeal to the High Court, but meantime we should advise licensees to play safe, and we see no reason why the police should not act upon their established view.

4.—Magistrates—*Case Stated—Who prepares—Submission of draft to parties when case prepared by justices.*

Acting on behalf of the standing joint committee it is proposed to appeal to the Divisional Court by way of Case Stated in respect of two informations dismissed on a point of law by a local bench of magistrates. I have been in touch with the clerk to the justices who informs me that the case must be drawn up in this office, which he says is the customary procedure. The prosecution in the lower court was undertaken by a police inspector and, in view of the fact that I was not present, my own view is that the case should be stated on behalf of the justices by someone who was present, *i.e.*, the clerk to the justices, and then sent to the defendant's solicitor and the clerk to the standing joint committee for agreement. Naturally, not having had the advantage of being present in court and hearing the submission made by the defendant's solicitor I find it very difficult to draw up the case myself.

I can find nothing which says in so many words that the clerk to the justices should draw up the case but I seem to recall reading in the *Justice of the Peace* not so very long ago a statement by the Lord Chief Justice in which, as I remember, he indicated that the normal practice in such case would be for the clerk to the justices to draw up the case except where it happened to be one of a complicated nature. I have caused a thorough search to be made but regrettably cannot find the copy in which this statement was printed, although it is of course possible that my memory is playing me false.

It would be most helpful, therefore, if I could have a reference from you to enable me to trace the volume in question and any other references to this particular matter which may have appeared in your paper from time to time.

MOROK.

Answer.

We think that the case which our correspondent has in mind is that of *Cowlishaw* v. *Chalkley* [1955] 1 All E.R. 367; 119 J.P. 171. He may be interested also in the remarks of the Lord Chief Justice in *Roberts* v. *Evans* (1949) 113 J.P. 137 at p. 138.

5.—Road Traffic Acts—*Aiders and abettors—Endorsement and disqualification for various offences.*

I shall be glad if you will kindly give me your opinion on the following, in connexion with the new Road Traffic Act, 1956. These matters have been discussed with my colleagues, and we cannot reach agreement.

1. Having regard to the provisions of the Road Traffic Act, 1956 (especially s. 26 and sch. 4), if a person is convicted of:—

(i) Aiding and abetting a speeding offence;

(ii) Aiding and abetting a charge of driving without due care and attention;

(iii) Aiding and abetting a charge of driving dangerously,

what is the position with regard to endorsing that person's licence. *Must* the bench endorse (except for special reasons) or has the court *power* to endorse?

2. Must or can a person convicted of aiding and abetting offences under s. 9 of the new Act, or s. 15 of the old Act, be disqualified?

Your opinion on these matters will be greatly appreciated.

KOFOR.

Answer.

We were always uncertain of the effect of s. 11 (4) of the 1930 Act which could be read as implying that aiders and abettors in offences other than dangerous driving were not guilty of an offence in connexion with the driving of a motor vehicle. Section 11 (4) is amended as from November 1, 1956 (*see* sch. 8, para. 13 of the 1956 Act). Taking this into account and having regard to s. 35, Magistrates' Courts Act, 1952 by which the aider and abettor " is guilty of the like offence " and to the implication which we think must be drawn from s. 26 (3) of the 1956 Act, we think that unless there is an express exception (as in s. 26 (3)) aiders and abettors are in the same position with regard to endorsement and disqualification as are principle offenders. Section 26 (3) makes no exception in the case of endorsements.

Our answers to the questions are therefore that in all three cases given in question (1) the court must order endorsement, in the absence of special reasons, and that the aider and abettor under s. 9 of the 1956 Act must be disqualified (in the absence of special reasons) on a second or subsequent conviction but the aider and abettor on a s. 15 charge (1930 Act) may be disqualified but there is, in his case, no compulsory disqualification.

6.—Road Traffic Acts—*Provisional licence holder—Motor bicycle with tradesman's box sidecar attached—Carrying pillion passenger who is not a qualified driver.*

In P.P. 13 at 120 J.P.N. 607 you dealt with the holder of a provisional driving licence who has not passed a test, and who, whilst driving a motor bicycle with tradesman's box sidecar attached, carries on the pillion seat a passenger who is not the holder of a licence. In your answer you expressed the opinion that such a passenger should be a qualified driver, and that an offence had been committed against reg. 16, Motor Vehicles (Driving Licences) Regulations, 1950, basing your decision on the assumption that paras. 16 (3) (*a*) and 16 (3) (*b*) are complementary one to the other, and that " sidecar " in the latter means the same as " sidecar constructed for the carriage of a passenger " in the former.

May I respectfully venture a different opinion, *i.e.*, that these two paragraphs are not complementary, but that para. 16 (3) (*a*) is intended to deal with vehicles of all classes in which passengers can be carried, except solo motor bicycles, and that para. 16 (3) (*b*) is intended to deal only with solo motor bicycles.

Paragraph 16 (3) (*a*) says in effect that the holder of a provisional driving licence shall use it only when under the supervision of a qualified driver, but makes an exception when the vehicle used is not constructed or adapted to carry more than one person. It then goes on to clarify the position of what is commonly called a motor cycle combination by laying down that a motor bicycle is " not constructed or adapted to carry more than one person unless it has a sidecar constructed for the carriage of a passenger attached." A motor bicycle with tradesman's box sidecar attached does not meet this requirement, and therefore comes within the scope of the exception already mentioned, so that supervision by a qualified driver is not compulsory, (however desirable it may be).

Paragraph 16 (3) (*b*), on the other hand, appears to be designed to ensure that a learner on a solo motor cycle—" a motor bicycle to which a sidecar is not attached "—carries only a passenger who is a qualified driver. It does this in the following words:—" he shall not . . . carry a passenger who is not himself the holder of a licence, etc." If, as you suggest, a motor bicycle with tradesman's box sidecar attached comes within the scope of this paragraph, we have the possible instance of a provisional licence holder on such a machine, carrying a qualified driver on the pillion and a person who is not a qualified driver in the box sidecar, still committing an offence because he is carrying " a passenger who is not the holder of a licence." In other words, I feel that the use of the term " a passenger " suggests that the kind of vehicle in mind when this paragraph was compiled was a vehicle which could normally carry only one passenger, *i.e.*, a motor bicycle without any sidecar attached. This contention is to some extent supported by the fact that the exemption clause for mechanically assisted tandem pedal bicycles is added to this paragraph, and not to para. 16 (3) (*a*).

As you said in your answer to the earlier question, the object of paras. 16 (3) (*a*) and 16 (3) (*b*) is to ensure that if a provisional licence holder carries any passenger that passenger should be a qualified driver, but in many instances that very object is defeated by the way the paragraphs are worded, and I for one feel that a re-drafting is long overdue.

M.E.N.M.

Answer.

We appreciate the point of our correspondent's argument, but we adhere to the answer which we gave at 120 J.P.N. 607. If a learner driver choses to carry an additional passenger as suggested in the question we think that he would be committing an offence against para. 16 (3) (*b*). We see no reason why this should not be so; the " combination " in question would not be constructed to carry the additional passenger.

We do not think that the exemption for tandem pedal bicycles helps in deciding this point. Such a machine is a motor bicycle to which no sidecar is attached and would, but for the exemption, come within the provisions of para. 16 (3) (*b*), which is, therefore, the obvious place in which to find the exemption.

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